

AG Contract No.: KR04-1637TRN
ADOT ECS File No.: JPA 04-079
Project No.: TEA-LHV-0(003)
Section: Magnolia Dr- Acoma Blvd
Project: Multi-use Pathway - Phase III
TRACS No.: SL512 01C
Budget Source Item No.:

INTERGOVERNMENTAL AGREEMENT

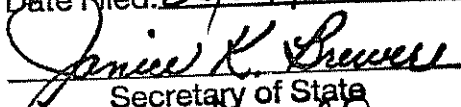
BETWEEN
THE STATE OF ARIZONA
AND
LAKE HAVASU CITY

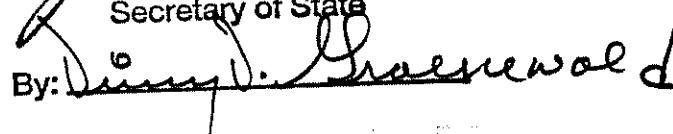
THIS AGREEMENT is entered into this date March 7, 2005, pursuant to Arizona Revised Statutes, § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the LAKE HAVASU CITY, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
 2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
 3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities.
 4. Such Project lies within the boundary of the City and has been selected by the City; the survey of the Project has been completed; and the plans, estimates and specifications have been prepared and as required, submitted to the State and the Federal Highway Administration (FHWA) for its approval.
 5. The City, in order to obtain Federal funds for the construction of the project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City, State and FHWA, including actual construction engineering (CE) and administration costs.
 6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.
-

NO. 27402
Filed with the Secretary of State
Date Filed: 03/07/05


Secretary of State

By: 

7. The work embraced in this Agreement is for the design, construction and maintenance a 12' wide ADA Multi-use pathway, signage and landscaping, located East of State Route (SR) 95, approximately 3000' from Magnolia Drive to Acoma Boulevard with Swanson Avenue falling in-between, hereinafter referred to as the "Project". A drainage structure will be installed on Swanson Avenue. The parties agree that the City will design, construct and maintain the Project, at an estimated cost of \$528,500.00.

Construction TRACS No.: SL512 01C

Estimated Federal-aid funds @ 94.3%

\$500,000.00

Estimated City funds @ 5.7%

\$ 28,500.00

***Total Estimated Construction Costs**

\$528,500.00

*(Includes construction, construction engineering administration and incidentals)

THEREFORE, inconsideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Agree to be the City's authorized agent for the Project and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designated the City to self-administer the Project.

c. Upon execution of this Agreement, make payments to the City up to a maximum not to exceed the federal aid funds shown for the direct actual cost of the construction of the Project, plus construction engineering, after receipt and approval of a reimbursement request.

d. Not be obligated to maintain this Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City shall:

a. With the aid and consent of the FHWA and the State using Arizona Procurement Procedures, proceed to advertise for, receive and open bids, subject to the concurrence of the FHWA and the State. Enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications at the lowest bid price.

b. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the City up to 15% of the construction cost. Construction administration costs not participated in by FHWA shall be borne by the City.

c. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

d. Upon execution of this Agreement, invoice the State for the estimated 94.3% federal aid construction and construction administration costs addressed under this Agreement. The City is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by federal funding or not

e. Upon completion and acceptance of the Project, provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance. Maintenance will consist of the care and good repair of all project features listed above and the landscaping in accordance with accepted horticultural practices, keeping all areas in good repair, free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed and established at the completion of the Project. The Agreement may be assumed by another governmental entity under the same stipulations.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regards to the City's relationship with the State only, assumes full responsibility for the design, plans and specifications, reports and the engineering in connection therewith, the construction of the improvements contemplated, cost over-runs and construction claims. The City will require its contractor(s) to name the State and ADOT as an additional insured in the contractor(s) insurance policies. The City will also require its contractor(s) to name the State and ADOT as an additional indemnitee in the City's contracts with its contractor(s). It is understood and agreed that the State's participation is confined to securing Federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damages incurred by any of the above and from any other damage to any person or property whatsoever, that is caused by any activity, condition or event arising out of the performance, nonperformance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees; the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and City, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

3. This Agreement shall remain in full force and effect until completion of the work; provided, however, that any provisions in this Agreement for electric power, water and maintenance shall be perpetual, unless assumed by another governmental entity.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
(602)-712-7525

Lake Havasu City
Attn: Jim Keane
2330 McCulloch Blvd N
Lake Havasu City, AZ 86403
(928) 453-8502

9. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State and City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and City at the end of the period for which the funds are available. No liability shall accrue to the State and City in the event this provision is exercised as a result of termination under this paragraph

11. Pursuant to Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

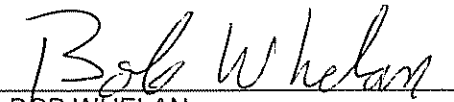
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

LAKE HAVASU CITY

STATE OF ARIZONA

Department of Transportation

By



BOB WHELAN
Mayor

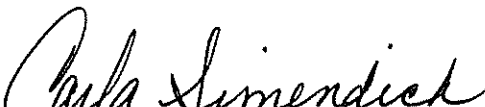
By



SUSAN TELLEZ
Contract Administrator

ATTEST

By



CARLA SIMENDICH
City Clerk

JPA 04-079

APPROVAL OF LAKE HAVASU CITY

I have reviewed the above referenced proposed Intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and LAKE HAVASU CITY and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 21ST day of January, 2005.

Michael D. Slovick
ASSY. City Attorney

COPY

RESOLUTION NO. 05-1926

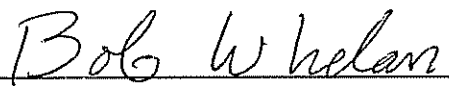
**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF LAKE HAVASU
CITY, MOHAVE COUNTY, ARIZONA, AUTHORIZING THE
MAYOR TO EXECUTE AN INTERGOVERNMENTAL
AGREEMENT WITH THE STATE OF ARIZONA (ADOT)
FOR CONSTRUCTION OF IMPROVEMENTS TO
PIMA WASH**

WHEREAS, the Arizona Department of Transportation has approved the exchange of \$500,000.00 in Federal Highway Administration (FHWA) funds to the City for construction of improvements to the Pima Wash in the City; and


WHEREAS, Lake Havasu City agrees to construct the Pima Wash Multi-Use Path, Phase 3 project, for an estimated construction cost of \$1,097,000;

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council hereby approve this intergovernmental agreement for the intent and purpose stated above, and authorize the Mayor to execute said agreement with the State of Arizona (ADOT) relating to the construction of improvements to the Pima Wash.

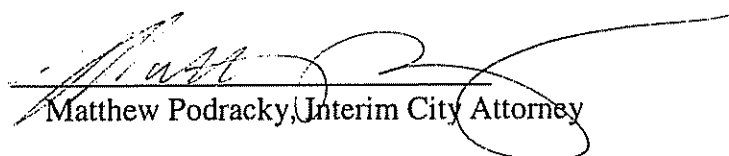
PASSED AND ADOPTED by the Mayor and City Council of Lake Havasu City, Arizona, this 22nd day of February, 2005.


Bob Whelan, Mayor

ATTEST:


Carla Simendich, City Clerk

APPROVED AS TO FORM
LAKE HAVASU CITY ATTORNEY'S OFFICE:

BY: 
Matthew Podracky, Interim City Attorney

REVIEWED BY:


Kevin P. Murphy, Public Works Director



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1637TRN (JPA 04-079), an Agreement between public agencies, i.e., The State of Arizona and Lake Havasu City, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: March 1, 2005

TERRY GODDARD
Attorney General


Susan E. Davis
Assistant Attorney General
Transportation Section